

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs December 11, 2009

DIANNA LYNN TAYLOR v. MICHAEL LYNN TAYLOR

Appeal from the Circuit Court for Sumner County
No. 2008-CV-32196 C. L. Rogers, Judge

No. M2009-01411-COA-R3-CV - Filed January 19, 2010

Husband appeals the grant of divorce to Wife on the ground of Husband's inappropriate marital conduct following a twenty-four-year marriage, the division of marital property, which favored Wife, and the award of transitional alimony and alimony *in solido* to Wife. We have determined the judgment should be modified in two ways and affirmed in all other respects.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Modified in Part and Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Russell E. Edwards, Hendersonville, Tennessee, for the appellant, Michael Lynn Taylor.

Debrah K. Frizzell, Hendersonville, Tennessee, for the appellee, Dianna Lynn Taylor.

MEMORANDUM OPINION AND ORDER¹

The parties to this appeal have stipulated that the issues presented shall be considered and ruled upon on an accelerated basis pursuant to Rule 13 of the Rules of the Court of Appeals of Tennessee.

¹Rule 13 provides that there will be no written decision in the form of an opinion; this provision assumes the parties will present oral arguments and the court will state its ruling from the bench following oral argument. The parties waived oral argument; thus, the court has elected to state our ruling in a Tenn. Ct. App. R. 10 Memorandum Opinion. Because we have designated this as a Tenn. Ct. App. R. 10 Memorandum Opinion, this opinion "shall not be published, and shall not be cited or relied on for any reason in any unrelated case." Tenn. Ct. App. R. 10.

Rule 13 of the Rules of the Court of Appeals affords parties an accelerated appeal provided the parties stipulate in writing, in the form and as the rule requires, that,

[a]fter arguments are presented, the court will take a short recess and confer. An oral decision will be made from the bench when the court reconvenes. Reasons for the decision will be stated by the court. If the court finds it is unable to rule without further deliberation, an oral decision will not be made, and the court will enter its written order as provided in paragraph 7.

Rule 13 further provides that the parties must stipulate that the decision of this court will be set forth in an order and there will be no written decision in the form of a published opinion. *Id.* Moreover, and significantly, the parties waive the right to request review of this court's decision by the Tennessee Supreme Court.² *Id.* Because the parties waived argument, our decision is set forth below in accordance with Rules 10 and 13 of the Rules of the Court of Appeals of Tennessee.

This appeal arises from a divorce following the parties' twenty-four-year marriage. Michael Taylor, the husband, is the appellant and the matters at issue pertain to the grounds for the divorce, division of the marital property and alimony.³

Mr. Taylor contends the trial court erred in granting Dianna Taylor a divorce on the ground of inappropriate marital conduct. He correctly states in his brief that he did not stipulate to the ground of divorce, only to be divorced. We, however, find the evidence does not preponderate against the trial court's finding that there was sufficient evidence to grant the wife a divorce on the ground of Mr. Taylor's inappropriate marital conduct. Therefore, we affirm the trial court in this respect.

He also contends the court erred in the division of the marital estate, the majority of which was awarded to Mrs. Taylor. We find no error with the division of the marital estate; we do, however, find two aspects of the judgment that need modification.

Mr. Taylor was ordered to pay a portion, \$11,370, of the Bank of America credit card debt and the court also awarded a judgment against him in favor of Mrs. Taylor for that same obligation. It appears the \$11,370 judgment was to assure payment of the credit card debt.

²The stipulation of the parties must be set forth in the form "Stipulation For Accelerated Civil Appeal" as proscribed in Rule 13. An Order to that effect must also be entered. *See* Ct. App. R. 13.

³There are no minor children.

The problem with this “belt and suspenders” approach is that if Mr. Taylor pays the credit card debt as he was ordered to do, Mrs. Taylor will still be entitled to enforce the judgment and collect the \$11,370 from Mr. Taylor, plus interest. This would result in Mr. Taylor paying the credit card debt twice. Therefore, the award of \$11,370 against Mr. Taylor must be vacated and the judgment modified accordingly.

Although the proof was very sparse concerning the possibility that \$10,000 in cash had been stored some where in the house, the trial court found that Mr. Taylor had taken the phantom \$10,000 and awarded that sum to Mr. Taylor in the division of the marital property. We have determined the evidence is insufficient to sustain that determination as Mr. Taylor denied taking the money and Mrs. Taylor merely testified that Mr. Taylor often kept cash around the house and that she thought he had taken money when they separated. She speculated that the amount could have been \$10,000 or \$15,000. Accordingly, the division of the marital property should be modified to that extent on remand. We leave it to the discretion of the trial court to determine whether the adjustment of the division of marital property, which may come out of the net proceeds from the sale of the marital home, should be applied to pay Mr. Taylor’s obligation to pay marital debts, instead of disbursing the funds to Mr. Taylor, due to the trial court’s finding that Mr. Taylor may not be reliable to pay his future obligations. We affirm the division of the marital estate in all other respects.

As for the contention the trial court erred in the award of spousal support to Mrs. Taylor, we find no error. The trial court found that Mr. Taylor had financial resources and the ability to pay \$375 per month for 48 months as transitional alimony. Although the evidence is disputed as to the husband’s financial resources and his ability to pay transitional alimony in the amount of \$375 per month, we find the evidence does not preponderate against the trial court’s finding that he has the ability to pay \$375 for 48 months and that Mrs. Taylor has a need that is much greater than that amount. As for alimony *in solido* or *in futuro*, the court found that Mrs. Taylor was in need of long-term spousal support but that Mr. Taylor would not be sufficiently responsible to consistently pay long-term spousal support. As a consequence, the court elected to award Mrs. Taylor a lump sum award of alimony *in solido* in the amount of Mr. Taylor’s net equity in the marital residence in lieu of periodic alimony. We find no error with this decision and therefore affirm.

Mr. Taylor also asks that he be awarded the cost of his attorney’s fees on appeal. He is not entitled to recover his attorney’s fees on appeal; thus, the request is denied.

It is therefore ORDERED that this matter is remanded to the trial court to modify the judgment as directed above. In all other respects, the judgment of the trial court is affirmed.

One half of the costs of appeal are assessed against the appellant, Michael Taylor, and one half of the costs are assessed against the appellee, Dianna Taylor.

FRANK G. CLEMENT, JR., JUDGE